

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
OMAHA DIVISION

KACEY KIMBROUGH,
Special Administrator of the Estate of
Shawn Thomas Kimbrough

Plaintiff,

vs.

CHRISTOPHER JAMES GORHAM,

SERVE:

**16402 Iske Drive
Bellevue, NE 68123**

JENNINGS PLANT SERVICES, LLC,

SERVE:

**Registered Agent:
USCA, Inc
1603 Farnam Street
Omaha, NE 68102**

SPENCER R. JENNINGS,

SERVE:

**4675 Sunset Dr
Blair, NE 68008-6343**

and

TARIN K. JENNINGS,

SERVE:

**4675 Sunset Dr
Blair, NE 68008-6343**

Defendants.

CAUSE NO.:

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff, Kacey Kimbrough, Special Administrator of the Estate of Shawn Thomas Kimbrough, by and through her undersigned attorney, and for her complaint, states as follows:

PARTIES

1. Plaintiff Kacey Kimbrough, Special Administrator of the Estate of Shawn Thomas Kimbrough was duly appointed as the Special Administrator of the Estate of Shawn Thomas Kimbrough by order of the Circuit Court of Washington County, Arkansas, Probate Division, Case Number 72PR-21-76, on January 26, 2021. Said Estate is, for purposes of jurisdiction and venue, a citizen and resident of the State of Arkansas and Kacey Kimbrough, individually, is a resident of the State of Missouri, domiciled in Joplin, Missouri and at the time of the events described herein she was a citizen and resident of the State of Arkansas and domiciled in Springdale, Washington County, Arkansas.

2. This is an action for the wrongful death of Shawn Thomas Kimbrough under Nebraska Revised Statute Sections 30-809 and 30-810 and pursuant to that statute the Estate is the proper party to bring the wrongful death claim.

3. Defendant Christopher James Gorham is a citizen of the State of Nebraska, domiciled in Blair, Nebraska.

4. Defendant Jennings Plant Services, LLC is a Nebraska corporation with its principal place of business at 4675 Sunset Dr., Blair, NE 68008-6343 and is a citizen of the State of Nebraska.

5. Defendants Spencer R. Jennings and Tarin K. Jennings are owners and managers of Jennings Plant Services, LLC and are citizens of the State of Nebraska.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action under 28 USC Section 1332 because the parties are citizens of different states or foreign states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. This Court has personal jurisdiction over Defendants as they are citizens of the state of Nebraska.

8. Venue is proper in this district under 28 USC Section 1391 (a) and (b) because Defendants are residents of this District and have breached duties to Plaintiff in this District and committed tortious acts in this District.

COUNT I

**PLAINTIFF'S WRONGFUL DEATH CLAIM AGAINST DEFENDANT
CHRISTOPHER JAMES GORHAM**

COMES NOW Plaintiff Kacey Kimbrough, Special Administrator of the Estate of Shawn Thomas Kimbrough and for her claim against defendant Christopher James Gorham states as follows:

9. This action for wrongful death, pursuant to the aforesaid Nebraska statute, is brought by said Estate for the benefit of the widow and next of kin and that Kacey Kimbrough was married to Shawn Thomas Kimbrough at the time of his death and the next of kin is the daughter of Shawn Thomas Kimbrough by his marriage to Kacey Kimbrough, to wit, Evelyn James Kimbrough, a minor born on March 25, 2017, and this action is brought by the Estate and for the exclusive benefit of Kacey Kimbrough, surviving widow, and Evelyn Kimbrough, minor child and next of kin.

10. On or about October 27, 2020 Shawn Kimbrough was driving a vehicle in a generally northbound direction on Highway 75, a two-lane road, just south of its intersection with MM 111 in the State of Nebraska.

11. Defendant Christopher James Gorham was traveling southbound at said time and place driving a 2011 Ford F150 pickup owned by Defendant Jennings Plant Services, LLC and drove the vehicle across the center line, outside of his lawful lane of travel, and directly into the lawful lane of travel of Shawn Thomas Kimbrough, resulting in a direct head-on collision, causing the death of Shawn Thomas Kimbrough on October 27, 2020.

12. Defendant Christopher James Gorham was intoxicated, under the influence of alcohol, with a blood alcohol content in excess of the lawful limit in Nebraska and was impaired in the operation of the vehicle.

13. Defendant Christopher James Gorham was careless and negligent in the operation of the vehicle in the following respects:

- a. In operating the vehicle while impaired and under the influence of alcohol in violation of Nebraska Revised Statutes Section 60-6-196;
- b. In failing to drive his vehicle on the right side of the road and driving his vehicle outside of his lawful lane of travel and directly into the path of Shawn Kimbrough in violation of Nebraska Revised Statutes Section 60-6-131;
- c. In operating his vehicle at an excessive rate of speed under the circumstances; and
- d. In failing to keep a careful look out for vehicles to his front, particularly the vehicle driven by Shawn Thomas Kimbrough.

14. Kacey Kimbrough and Evelyn Kimbrough were financially dependent on Shawn Thomas Kimbrough for support and living together as a loving family and as a direct result of the

carelessness and negligence of Christopher James Gorham, Shawn Thomas Kimbrough died and Kacey Kimbrough and Evelyn Kimbrough lost the support, society, comfort and companionship of Shawn Thomas Kimbrough. Shawn Thomas Kimbrough was a loving, intelligent, educated and highly motivated young man who was employed and earning a substantial income and at the beginning of a long successful career and Kacey Kimbrough and Evelyn Kimbrough have been deprived of the financial support and security provided by Shawn Thomas Kimbrough and have incurred medical expense and the cost of funeral, and related expense.

WHEREFORE, Plaintiff prays for judgment against Christopher James Gorham in an amount is that is fair and reasonable, and for the cost of this action, and for such further and different relief as the court may deem just and proper under the circumstances.

COUNT II

WRONGFUL DEATH CLAIM AGAINST JENNINGS PLANT SERVICES, LLC

COMES NOW the Plaintiff, Kacey Kimbrough, Special Administrator of the Estate of Shawn Thomas Kimbrough and for her claim against Defendant Jennings Plant Services, LLC and realleges paragraphs 1 through 13 stated above and in addition states as follows:

15. At all relevant times Christopher James Gorham was employed by Defendant Jennings Plant Services, LLC and at the time of the crash operating the vehicle within the scope and course of said employment, and, therefore, said Defendant is legally liable for the negligence of Defendant Christopher James Gorham by reason of respondeat superior and/or similar theories.

16. Defendant Christopher James Gorham had two previous convictions for driving while intoxicated and had a known propensity for driving a vehicle under the influence of alcohol. The fatal crash occurred in the morning during working hours, while Mr. Gorham was driving a vehicle owned by Defendant Jennings Plant Services, LLC and Jennings Plant Services, LLC

entrusted the vehicle to Christopher Gorham and was negligent in entrusting the vehicle to him either because he was intoxicated at the time of the entrustment or had a known propensity for driving while intoxicated.

17. Defendant Jennings Plant Services, LLC was negligent in hiring Christopher Gorham or in continuing to employ Christopher Gorham for a job requiring him to drive because of his history of criminal convictions for driving while intoxicated and his known propensity for driving while intoxicated.

18. Defendant Jennings Plant Services, LLC was negligent in failing to supervise Christopher Gorham. Specifically, Christopher Gorham was intoxicated in the middle of the working day and Defendant Christopher Gorham either arrived at work while intoxicated or consumed alcoholic beverages and became intoxicated during the hours of his employment and Defendant Jennings Plant Services, LLC failed to supervise and monitor the activities of Christopher Gorham and allowed him to begin work while he was intoxicated or alternatively to consume alcohol and become intoxicated during his work hours.

19. As a direct result of the aforesaid negligence of Jennings Plant Services, LLC, Shawn Thomas Kimbrough was killed and Kacey Kimbrough and Evelyn Kimbrough, a minor, have suffered damages described above and Plaintiff is entitled to recover those damages.

WHEREFORE, Plaintiff prays for judgment against defendant Jennings Plant Services, LLC in an amount that is fair and reasonable, and for the cost of this action, and for such further and different relief as the court may deem just and proper under the circumstances.

COUNT III

COMES NOW the Plaintiff, Kacey Kimbrough, Special Administrator of the Estate of Shawn Thomas Kimbrough and for her cause of action against Defendants Spencer R. Jennings

and Tarin K. Jennings realleges paragraphs 1 through 19 of this complaint as stated above and in addition states as follows:

20. Defendants Spencer R. Jennings and Tarin K. Jennings are the owners and managers of Defendant Jennings Plant Services, LLC and are involved in the daily management and supervision of employees of Jennings Plant Services, LLC.

21. Defendant Christopher James Gorham had two previous convictions for driving while intoxicated and had a known propensity for driving a vehicle under the influence of alcohol. The fatal crash occurred in the morning hours, while Mr. Gorham was driving a vehicle owned by Defendant Jennings Plant Services, LLC. Spencer R. Jennings and Tarin K. Jennings are the owners and managers of Jennings Plant Services, LLC and, entrusted the vehicle to Christopher Gorham and were negligent in entrusting the vehicle to him either because he was intoxicated at the time of the entrustment or had a known propensity for driving while intoxicated.

22. Defendants Spencer R. Jennings and Tarin K. Jennings personally decided to hire Christopher Gorham to fill a job requiring him to drive and they knew or should have known of his history of criminal convictions for driving while intoxicated and his known propensity for driving while intoxicated and were careless and negligent in hiring Christopher Gorham to fill this position.

23. Defendants Spencer R. Jennings and Tarin K. Jennings were negligent in failing to supervise Christopher Gorham. Specifically, Christopher Gorham was intoxicated in the middle of the working day and Defendant Christopher Gorham either arrived at work while intoxicated or consumed alcoholic beverages and became intoxicated during the hours of his employment and Defendants Spencer R. Jennings and Tarin K. Jennings were negligent in failing to supervise and

monitor the activities of Christopher Gorham and allowed him to begin work while he was intoxicated or alternatively to consume alcohol and become intoxicated during his work hours.

24. As a direct result of the aforesaid negligence of Spencer R. Jennings and Tarin K. Jennings, Shawn Thomas Kimbrough was killed and Kacey Kimbrough and Evelyn Kimbrough, a minor, have suffered damages described above and Plaintiff is entitled to recover those damages.

WHEREFORE, Plaintiff prays for judgment against Defendants Spencer R. Jennings and Tarin K. Jennings in an amount that is fair and reasonable, said judgment to be joint and several, and for the cost of this action, and for such further and different relief as the court may deem just and proper under the circumstances.

Respectfully submitted,

/s/ Andrew S. Buchanan
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